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May 23, 1983

Mr. Barry Bush, Chief
Fire Service Training
Fire Standards and Training Commission
18 Low Avenue
Concord, New Hampshire 03301

Dear Mr. Bush:

At its May 3, 1983 meeting, the Commission requested our advice on the petition for declaratory judgment concerning the issue of whether the hiring jurisdiction is responsible for providing and paying for the training of firefighters.

FIRE 201.12(a) of the Commission's Rules allows any person to petition the Commission for "a declaratory ruling as to the applicability of ... [a]ny rule of the commission. ..." The petition being considered requests a ruling on the applicability of FIRE 600 on the issue whether the hiring jurisdiction is responsible for providing and/or paying for training of firefighters. It is our opinion that FIRE 600 is not applicable because it does not address the issue of responsibility for the training program. Accordingly, the Commission does not have the authority to resolve this issue by a declaratory ruling.

The issue of responsibility for providing firefighter training is not directly addressed in either the statutes or the rules of the Commission. It should be noted, however, that RSA 154-C:6 does provide:

"The commission may reimburse fire departments ... for expenses incurred in the training of their fire personnel in attendance at approved training programs ..."



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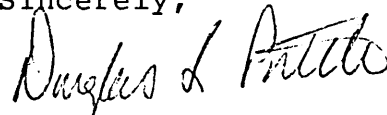
When read in conjunction with the former statute on reimbursement, RSA 154-B:8, which allowed "fire service personnel" to apply for tuition reimbursement upon successful completion of the fire service training program or course, RSA 154-C:6 implies that the departments may be liable for the training programs or courses. This statute does not, however, indicate whether the responsibility of the department would result from that department's agreement to be responsible for those costs or because it was required to provide or assume the training costs because the legislature is making them responsible. The legislative history of the statute does not clarify the legislative intent.

In light of the absence of any current statute or rule addressing this issue, we believe that it is beyond the power of the Commission to make such a determination by a declaratory ruling. In our estimation, such a determination would be a "statement of general applicability ... to prescribe ... a procedure ... binding on persons outside the agency" within the definition of "rule" in RSA 541-A:1, IV. Before the Commission could adopt such a rule, it would have to comply with the Administrative Procedures Act. See Appeal of Nationwide Insurance Co., 120 N.H. 90, 93 (1980).

It should further be noted that this opinion does not address the issue of whether the Commission has the authority to adopt a rule regarding the hiring jurisdiction's responsibility for training firefighters.

I trust this has responded to your inquiry. Please let me know if you have any further questions.

Sincerely,



Douglas L. Patch
Assistant Attorney General
Division of Legal Counsel

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